

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

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MAY 10 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of

TRIAD FAMILY NETWORK, INC.
Winston-Salem, North Carolina
Channel 207C3

POSITIVE ALTERNATIVE RADIO, INC.
Asheboro, North Carolina
Channel 207A

For Construction Permit for a
New Noncommercial Educational
FM Station

) MM No. 93-41

) BPED-910227MD

) BPED-911119MC

TO: Administrative Law Judge
Joseph P. Gonzalez

MOTION TO STRIKE

Positive Alternative Radio, Inc. ("Radio") hereby moves that
the Presiding Judge issue an Order striking a portion of the

Virginia, Salem, Virginia, Blountville, Tennessee, and Martinsville, Virginia, as well as pending applications for Asheboro, North Carolina (the subject of this proceeding), Point Pleasant, West Virginia, Union City, Tennessee,¹ and Oxford, North Carolina. A financing issue and a "warehousing" issue were sought by Triad. An Opposition was filed by Radio April 21, 1993.

2. The Reply of Triad has now raised new and previously unconsidered matter in that at footnote 1 of page 3, Triad directs to the attention of the Presiding Judge additional previously unmentioned interests of principals of Radio in additional Radio stations in Fieldale, Virginia, Point Pleasant, West Virginia, Fairlawn, Virginia, and Union City, Ohio. For the first time, Triad questions whether Radio has sufficient funds not only to construct and operate the previously mentioned stations, but also those newly added. In its original Petition to Enlarge Issues, Triad has accused Radio of "warehousing" to the extent that it had not completed construction of the stations listed above (and had filed applications which Triad implied would be "warehoused" when granted). Now, in its Reply, Triad has expanded that list by the addition of stations in Point Pleasant, West Virginia, Union City, Ohio, Union City, Tennessee and Winston-Salem, North Carolina. None of these was previously mentioned and now constitute new material which Radio is precluded from disputing.

3. Section 1.45(b) of the Commission's rules provides that

¹ Radio has no pending application for Union City, Tennessee; Triad may have meant Union City, Indiana.

The reply shall be limited to matters raised in the oppositions. . .

All of the material relating to stations other than those originally set forth in Triad's petition constitute new matter. It was not raised in either the petition or in Radio's opposition to the Triad petition to enlarge. See Marbro Broadcasting Co., Inc., 2 FCC 2d 1030 (1986); Aljir Broadcast Co., Inc., 12 FCC 2d 163 (Rev. Bd. 1968); Media Inc., 22 FCC 2d 886 (1970).

CERTIFICATE OF SERVICE

I, Margaret A. Ford, Office Manager of the law firm of Booth, Freret & Imlay, do hereby certify that copies of the foregoing MOTION TO STRIKE were mailed this 10th day of April, 1993, to the offices of the following:

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